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Attorneys for Defendants Apollo Group, Inc.

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
CALIFORNIA

CHAD MCKINNEY, an individual,
Plaintiff,

v.

APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

Defendants

CASE NO. 07-CV-2373 WQH CAB

**NOTICE OF MOTION AND
MOTION TO SET ASIDE ENTRY
OF DEFAULT AGAINST APOLLO
GROUP, INC.**

[FRCP 55(c)]

**NO ORAL ARGUMENT, UNLESS
REQUESTED BY THE COURT**

Date: April 7, 2008

Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

TO PLAINTIFF AND HIS ATTORNEY(S) OF RECORD:

PLEASE TAKE NOTICE that on April 7, 2008 at 11:00 a.m., or as soon
thereafter as counsel may be heard by the above entitled Court, located at 940 Front

USDC-SOUTHERN DISTRICT CALIFORNIA
CASE NO. 07-CV-2373 WQH CAB

NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT

Snell & Wilmer

LLP
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

1 Street, San Diego, California 92101, Courtroom 4, defendant Apollo Group, Inc.
2 ("Apollo") will and hereby does move the Court pursuant to Rule 55(c) of the
3 Federal Rules of Civil Procedure ("FRCP") to set aside the Court Clerk's entry of
4 default entered on February 29, 2008 ("Default").

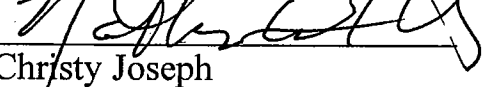
5 This action is brought on the following grounds: (1) The Default is void
6 since Apollo never received notice of the action before the answer was due; (2) The
7 Court lacks jurisdiction over Apollo since Apollo was never properly served and
8 therefore could not respond before the answer was due; and/or (3) Apollo
9 reasonably believed, but was mistaken, that it had not been given actual notice and
10 was properly served so that it should be relieved from the Default.

11 This motion is based on this notice of motion and motion, the memorandum
12 of points and authorities, the declarations of Matthew Mitchell, Ellen Bowens and
13 Nathan W. Hicks filed herewith, and supporting exhibits thereto, the Court's files in
14 this matter, all supporting documents, evidence and oral argument before this Court
15 at the time of the hearing, and any other matter properly before the Court.

16 This motion is made following a reasonable and good-faith attempt to
17 conference with plaintiff.

18 Date: March 7, 2008

SNELL & WILMER L.L.P.

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20 By: 
21 Christy Joseph
22 Nathan W. Hicks
23 Attorneys for Apollo Group, Inc.
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PROOF OF SERVICE
USDC – Southern District, Case No. 07-CV-2373 WQH CAB

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

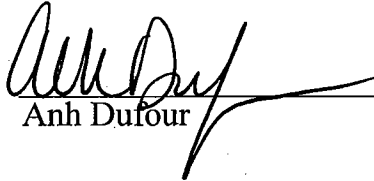
On March 7, 2008, I served, in the manner indicated below, the foregoing document described as **NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST APOLLO GROUP INC.** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff Tel: 619-634-3566
United States District Court Attention: Hon. Judge William Q. Hayes 940 Front Street San Diego, CA 92101	

☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Costa Mesa, California.


 Anh Dufour